No. 82-421

In The

Supreme Court of the United States

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October Term, 1982

LaBAR ENTERPRISES, INC. and LaBAR TRANSPORTATION CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Whether an indictment which fails to charge that acts of corporate agents were done within the scope of the agents' authority and with the intent to benefit is in accord with the Fifth Amendment requirement that all essential elements be alleged in an indictment?

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No.

In The

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LaBAR ENTERPRISES, INC. and LaBAR TRANSPORTATION CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

The pretrial opinion of the United States District Court for the Middle District of Pennsylvania is unreported. A copy of this opinion is printed in the appendix at 3a.

Th post-trial opinion of the United States District Court for the Middle District of Pennsylvania, which was affirmed on appeal, is reported at 521 F.Supp. 203 (M.D.Pa. 1981).

The judgment order of the United States Court of Appeals for the Third Circuit, affirming the judgment of the United States District Court is printed in the appendix at 1a.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit, reprinted in the appendix at 1a, was entered on June 10, 1982. A timely motion for reconsideration was denied on July 12, 1982. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution:

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. . . .

STATEMENT OF THE CASE

This Court recently rendered a decision of major significance on the subject of corporate antitrust liability. *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, ___ U.S. ___, 102 S.Ct. 1935, 72 L.Ed.2d 330 (1982). This certiorari petition presents similar issues in an equally important context, that of corporate criminal liability. This Court has never decided the elements of an indictment that are essential to charge a corporation with a crime of intent. Indeed, the Court has not

definitively ruled on what special allegations must be proved in a prosecution in order to convict a corporation.[1]

Questions pertinent to corporate criminal liability present a major policy issue for resolution by the court. Criminal prosecutions of corporations are more commonplace. The problem of corporate criminal liability continues to attract the attention of the commentators. *See, e.g., Developments in the Law—Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions*, 92 Harv.L.Rev. 1227 (1979) (hereinafter, "*Developments*"), Stone, *The Place of Enterprise Liability in the Control of Corporate Conduct*, 90 Yale L.J. 1 (1980). Nevertheless, the most authoritative rulings on the essential elements of proof at trial remain those of the various courts of appeals. *See, e.g., Standard Oil Co. v. United States*, 307 F.2d 120 (5th Cir. 1962). No opinion by a court of appeals specifically and comprehensively addresses the issue of the essential elements which must be specifically alleged in an indictment to charge a corporation with an intent crime. Indeed, the matter directly presented by this petition appears to be a case of first impression.[2] The writ should be granted because of the indictment's failure to allege two essential elements necessary to charge the petitioning corporations with crimes, and because of the important policy questions presented for resolution by the court.

This petition is submitted on behalf of two corporations, LaBar Enterprises Inc. ("LaBar Enterprises") and LaBar Transportation Corporation ("LaBar Transportation"). These two

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1. In *New York Central & Hudson R.R. Company v. United States*, 212 U.S. 481, 29 S.Ct. 304, 53 L.Ed. 613 (1909), the Court determined that corporations could be charged with and convicted for intent crimes.

2. As stated by the district court, "Neither party has been able to locate a case on point, and the Court has been unable to do so." (4a).

corporations were among six defendants (three corporations and three individuals) who were charged under the indictment with conspiracy, false statements and mail fraud in connection with the operation of mail hauling contracts and the submission of fuel cost adjustments. The three corporate defendants, including LaBar Enterprises and LaBar Transporation, moved to dismiss the indictment on the ground that the indictment contained no allegation that officers, employees or agents were acting within the scope of their authority and with intent to benefit the corporations. It was argued that such allegations were essential elements of the offense, required to be made either explicitly or by equivalent factual assertions. The district court in an unreported opinion denied the motion (3a). The matter proceeded to trial, and at the close of the government's case, the district court granted the motion for judgment of acquittal made by the third corporate defendant, Petroleum Suppliers, Inc. The district court also granted judgment of acquittal on all false statement counts as to all defendants. The indictment was sent with the jury, which returned verdicts of guilty on all remaining counts. LaBar Enterprises and LaBar Transportation were each fined $31,000. The issue was again raised in post-trial motions, and once again denied by the district court. *United States v. LaBar,* 521 F.Supp. 203, 226 (M.D.Pa. 1981). The issue was presented on appeal to the United States Court of Appeals for the Third Circuit, which in a judgment order entered June 10, 1982, affirmed the judgment of the district court. A timely petition for rehearing was denied on July 12, 1982. This petition for writ of certiorari followed.[3]

In the indictment,[4] LaBar Enterprises was alleged to be a holding company owned wholly by James C. LaBar, its president

3. LaBar Enterprises and LaBar Transportation have also joined in a separate petition filed on behalf of the two corporations and James C. LaBar and Donald J. Romanowski, two of the three individuals found guilty at trial.

4. (7a).

and also an individual defendant. LaBar Transportation was alleged to be Enterprises' wholly-owned subsidiary. Donald J. Romanowski, a second individual defendant, was alleged to be vice-president and treasurer of both LaBar Enterprises and LaBar Transportation.

The indictment, in certain parts, tracks the language of the conspiracy, mail fraud and false statements sections of Title 18, and charges generally that the "defendants", as a group, did certain things constituting violations of the particular sections involved and in violation of specifically referenced regulations. It is also alleged, for example, that LaBar Transportation "submitted various invoices or bills for fuel. . . ."

Elsewhere in the indictment, it is alleged that LaBar Transportation purchased fuel from Petroleum Suppliers "at prices arbitrarily and fraudulently inflated" and that LaBar Transportation was, as a result of the scheme or device, "charged higher prices per gallon for diesel fuel. . . ." It was also alleged that the "defendants, *through* LaBar Transportation Corporation," directly or indirectly caused to be submitted . . . [the] various requests for fuel cost adjustments. . . ." (Emphasis added.)

The indictment is devoid of specific allegations that officers, agents and employees of either LaBar Enterprises or LaBar Transportation or both, acting within their "scope of authority" (*i.e.*, that they had authority to act in the particular sphere of corporate business involved), committed acts with an intent to benefit one or both of their corporate principals. Neither does the indictments contain equivalent factual assertions which show that these essential elements were considered by the grand jury in their deliberations. Rather, it plainly appears that the indictment was drawn, and proceedings before the grand jury conducted, without any attention to these essential elements.

REASONS FOR GRANTING THE WRIT

The indictment contains no allegations, made either explicitly or by equivalent factual assertions, that officers, employees or agents of LaBar Enterprises or LaBar Transportation were acting within the scope of their authority and with the intent to benefit their corporate principals. An indictment without essential elements is fatally defective and must be dismissed, since such an indictment provides no basis for concluding that the essential elements were considered by the grand jury in its deliberations.

The Fifth Amendment provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . .

All elements of the offense charged against a defendant must be stated in the indictment so that it appears, and in order to make certain, that each element essential to the government's case was considered expressly by the grand jury.

> The specific reason for the requirement that the indictment contain all of the essential elements of the crime charged in this case is that there could be no assurance that the grand jury would indict if it had not considered all of the essential elements of the crime. The defendant's Fifth Amendment protection of being called to answer only upon a grand jury indictment would be eroded by allowing the courts to supply missing elements of the charged offense.

United States v. *Denmon*, 483 F.2d 1093, 1095 (8th Cir. 1973). *See generally, Russell* v. *United States*, 369 U.S. 749, 82 S.Ct.

1038, 8 L.Ed.2d 240 (1962).[5] Moreover, by having each element and component of the government's case against a defendant specified, a conviction returned by the petit jury, if one be had, will be based upon the same basic theory of the case as the grand jury had. *United States v. Adamo,* 534 F.2d 31, 36 (3d Cir.), *cert. denied sub nom., Kearney v. United States,* 429 U.S. 841, 97 S.Ct. 116, 50 L.Ed.2d 110 (1976), *discussing United States v. Curtis,* 506 F.2d 985 (10th Cir. 1974); *United States v. Michael,* 456 F.Supp. 335, 343 (D.N.J. 1978), *aff'd,* 605 F.2d 1198 (3d Cir. 1979), *cert. denied,* 444 U.S. 1032, 100 S.Ct. 702 (1980). *See also, United States v. Tornabene,* 222 F.2d 875 (3d Cir. 1955).

In order to convict a corporate defendant of a specific intent crime, the government must show that its officers, employees and other agents (1) committed an illegal act with the requisite intent, and did so, (2) with an intent to benefit their employer and (3) within the scope of their authority. *United States v. American Radiator & Standard Sanitary Corporation,* 433 F.2d 174, 204 (3d Cir. 1970), *cert. denied,* 401 U.S. 948, 91 S.Ct. 928, 28 L.Ed.2d 231 (1971); *Developments,* at 1247-51. An agent acts within the scope of his authority, and exposes his corporation to criminal liability, when he has been invested with authority to act on behalf of the corporation in the sphere of corporate business in which he allegedly commits the criminal act. *See United States v. Demauro,* 581 F.2d 50 (2d Cir. 1978); *United States v. Hilton Hotels Corp.,* 467 F.2d 1000, 1006-07 (9th Cir. 1972), *cert. denied,* 409 U.S. 1125, 93 S.Ct. 938, 35 L.Ed.2d 256 (1973); *United States v. Johns-Manville Corp.,* 231 F.Supp. 690 (E.D.Pa. 1963). An

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5. No question is presented here as to whether the Fifth Amendment grand jury requirement is applicable since conspiracy and mail fraud are "infamous" crimes. *Compare United States v. Yellow Freight Systems, Inc.,* 637 F.2d 1248 (9th Cir.), *cert. denied,* ____ U.S. ____, 102 S.Ct. 91, 70 L.Ed.2d 84 (1981).

agent who acts with the purpose of benefiting the corporate principal acts with the intent to benefit the corporation; actual benefit is irrelevant. *See United States v. Beusch*, 596 F.2d 871, 877 (9th Cir. 1979); *Standard Oil Co. v. United States*, 307 F.2d 120, 125 (5th Cir. 1962); *United States v. Gibson Products Co.*, 426 F.Supp. 768, 770 (S.D.Tex. 1976); *United States v. Hougland Barge Line, Inc.*, 387 F.Supp. 1110, 1114 (W.D.Pa. 1974).

The leading case on the question of the sufficiency of proof of intent to benefit is the Fifth Circuit decision in *Standard Oil*. In that case, a corporate parent and its wholly-owned subsidiary appealed from the imposition of fines and the convictions on charges pertaining to false statements. Employees of the subsidiary engaged in a complex scheme in which false tickets were prepared showing the production of oil from the wrong wells, and also showing the production of oil that never existed. Through a complex series of transactions, the defendant parent corporation paid for oil which it already owned. The Court of Appeals for the Fifth Circuit held that the proof failed to show that individuals involved had acted "deliberately . . . in the course of employment," *i.e.*, with the intent to benefit either the parent or subsidiary corporations.

A second question was presented in *Standard Oil* with respect to the sufficiency of a single count of the indictment. The count in question charged that the defendants "did fail and neglect to keep complete" records. 307 F.2d at 130. However, because the crime was a specific intent one, requiring that the individuals act purposely, the Fifth Circuit concluded that two essential elements (the agent's illegal act with knowledge and with the intent to benefit) were not alleged and the count was dismissed.

The indictment contains no allegations regarding the scope-of-authority and intent-to-benefit elements.[6] From all that appears in the indictment, LaBar Enterprises and LaBar Transportation are named as defendants merely because as entities they participated in the questioned transactions. As amply demonstrated by the *Standard Oil* case, participation by a corporation in a transaction (the parent company purchased oil and paid money for non-existent oil) does not establish corporate criminal liability. From all that appears in the indictment, the corporations are named because certain individual officers are accused. That too is inadequate. The listing of a corporation as an instrumentality, which appears in the instant indictment, by language such as "through the use of" a corporate defendant, is wholly inadequate to charge that corporation with an offense. *See United States v. Sherpix, Inc.*, 512 F.2d 1361 (D.C.Cir. 1975). To be sure, many actions were taken by individuals with close connections to the corporate petitioners. Yet the indictment provides no specifics, for example, as to which if any of the corporations the individuals were allegedly intending to benefit. The failure of the indictment to charge essential elements is a problem even where only one corporate defendant is named. The vagueness and lack of specificity of this indictment is, however, compounded and magnified by the presence of three separate corporate defendants and the dual capacities of several of the officers and employees. The essential question is one of fairness. The grand jury failed to determine whether one or more of the corporations might

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6. It may be conceded for argument purposes that the first of the three identified essential elements of an indictment against a corporation, the allegation that an agent committed an illegal act with the requisite intent, is satisfied here, since the indictment at several junctures charged that the defendants, individual and corporate, did certain acts "knowingly." By comparison, in *Standard Oil*, this element and the "course of employment" (intent to benefit) element, were not satisfied and, to the contrary, the indictment affirmatively charged what actually amounted merely to negligent conduct by the agent.

lawfully be charged with the acts of an officer, employee or agent. The evil of trial in the absence of adequate grand jury findings is one against which the Fifth Amendment is designed to protect.

Where the requirement that there be scope-of-authority and intent-to-benefit allegations in the indictments against corporate defendants has not been satisfied, and indeed has been completely ignored by the government and the grand jury, charging on language of the pertinent statutes is not sufficient. Statutory language alone is adequate only where the statute's express language contains all the elements of an offense. *See Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed.2d 590, 620-21 (1974); *Russell v. United States*, 369 U.S. 749, 765, 82 S.Ct. 1038, 1047-48, 8 L.Ed.2d 240 (1962); *United States v. Enger*, 472 F.Supp. 490, 507 (D.N.J. 1978). For example, in *United States v. Goldstein*, 502 F.2d 526 (3d Cir. 1974), the conviction was reversed and the indictment dismissed where the indictment had charged a willful failure to file a tax return on or before April 15, when in fact the defendant had no duty to file a return until May 7. In such circumstances, the date was an essential fact, notwithstanding its absence from the statute defining the offense.

In *United States v. King*, 587 F.2d 956 (9th Cir. 1978), the physician defendant was licensed and registered to dispense controlled substances. He and a co-defendant were convicted of conspiracy to possess a controlled substance with intent to distribute. The Court of Appeals for the Ninth Circuit reversed the conviction and dismissed the indictment because it failed to charge an essential element in the government's case, that the distribution was without a legitimate medical purpose, over the objection of the defense that such an element was not provided by the statute.

In *United States v. Beard*, 414 F.2d 1014 (3d Cir. 1969), the indictment was dismissed where it failed to allege "unlawful or

fraudulent intent" in connection with the transportation of forged securities. The court concluded that the absence of such an allegation, an essential element of the charge, meant that there had been no finding by the grand jury on the essential element. The omission was not merely a "technical deficiency." It should be observed that the indictment did charge that the defendant "did cause to be transported . . . a falsely made and forged security . . . knowing the same to be a falsely made and forged security." *Id.* at 1015 n.1. A charge of knowledge with respect to the nature of the security did not, however, suffice to charge "unlawful or fraudulent intent" in connection with its transportation.

In the case of *United States v. Camp*, 541 F.2d 737 (8th Cir. 1976), the use of force was an essential element in the offense charged, but had been omitted from the indictment. A reading of the indictment did not indicate that the grand jury considered this essential element, and the indictment was therefore dismissed. Similarly, there is no indication in the present indictment against LaBar Enterprises and LaBar Transportation that the grand jury has considered those elements essential to a proper charge against a corporation. *See also, United States v. Wabaunsee*, 528 F.2d 1 (7th Cir. 1975) (absence of allegation goods were stolen); *United States v. Sherpix, Inc.*, 512 F.2d 1361 (D.C.Cir. 1975) (no allegation of conspiring by corporation); *United States v. Denmon*, 483 F.2d 1093, 1095 (8th Cir. 1973) (absence of allegation on intent); *United States v. Fischetti*, 450 F.2d 34 (5th Cir. 1972) (absence of allegation on intent); *cert. denied*, 405 U.S. 1016, 92 S.Ct. 1290, 31 L.Ed.2d 478 (1972); *United States v. Parisien*, 515 F.Supp. 24 (D.N.D. 1981).

The missing elements of the government's case against a corporation, *i.e.*, the "intent to benefit" and "scope of authority" requirements, could have been charged either explicitly or by equivalent facts appearing in the indictment. An indictment

charging that particular criminal acts were deliberately done "by officers, employees and agents of the corporation with the intent to benefit their employer" would be an explicit allegation of intent to benefit. An example of an equivalent factual allegation would be the assertion that "the officer of the corporation acted to increase its profits." The indictment here is devoid of any explicit allegations or equivalent factual assertions that any officer, employee or agent of LaBar Transportation or LaBar Enterprises acted either with the intent to benefit or within the scope of authority. The indictment is therefore defective and should have been dismissed.

The district court concluded that the presence of the word "knowingly" in the indictment was sufficient to charge the corporate petitioners with the offenses. The district court, however, confused the presence of this word with the necessity for pleading all three, and not merely one, of the essential elements. The indictment charged the individuals, as well as the corporations, with doing acts "knowingly." This was, of course, an allegation required to be made against the individuals. These individual allegations were also essential to establish corporate liability, since the first of the three elements of corporate liability is that individual agents commit illegal acts with the requisite intent. The allegation that individuals acted "knowingly" satisfied the first element of corporate liability. But only the first element was thereby satisfied. That the indictment satisfies one element is hardly sufficient when all three elements are essential to charge corporate criminal liability.

Language charging the corporations with doing acts "knowingly" was mere surplusage, since such language is ineffective in charging any of the essential elements. As the district court candidly acknowledged, it is a "fiction to speak of a corporation 'knowing' something". (4a). This conclusion is correct since corporations cannot possess "knowledge," and cannot act knowingly.

> There is no single, broadly accepted theory of corporate blameworthiness which justifies the imposition of criminal penalties on corporations. For an individual defendant, the mental state with which he committed the illegal act determines his moral culpability. But mental state has no meaning when applied to a corporate defendant, since an organization possesses no mental state.

Developments, at 1241 (citations omitted). Notwithstanding this, the district court concluded:

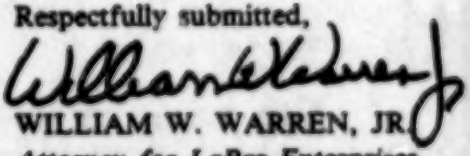
> The indictment in this case charges each of the corporate defendants with knowing and willful violations of the law. No further allegations with respect to that element of the offenses need be set forth in the indictment.

(5a). The further defect in the trial court's analysis is its disregard for the Fifth Amendment grand jury requirement. There is no requirement that a grand jury consider whether a corporation did something "knowingly"; rather, the requirement is that the grand jury consider the three elements. The word "knowingly" fails to express the essential elements, both to the legally trained mind and, more importantly, to lay members of a grand jury. There is no assurance whatsoever in the present indictment that the essential elements of the government's case against LaBar Enterprises and LaBar Transportation were taken into account by the grand jury.

CONCLUSION

The court of appeals, without opinion, affirmed the judgment of the district court. This is a case of first impression, in this Court, at the very least, with broad ramifications in the entire area of corporate criminal prosecution. These issues merit this Court's attention. The writ should be granted so that this Court can review and correct the decision of the court below.

Respectfully submitted,



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APPENDIX

JUDGMENT ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JUNE 10, 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2744, No. 81-2745
No. 81-2746, No. 81-2747

UNITED STATES OF AMERICA,

v.

JAMES C. LaBAR, DONALD J. ROMANOWSKI, LaBAR ENTERPRISES, INC. and LaBAR TRANSPORTATION CORPORATION,

LaBAR ENTERPRISES, INC., Appellant in Nos. 81-2744/45

LaBAR TRANSPORTATION CORP., Appellant in Nos. 81-2746/47

(D.C. Crim. Nos. 80-00130-04/5 - M.D. Pa. - Scranton)

Argued May 28, 1982

BEFORE: SEITZ, *Chief Judge*, SLOVITER and BECKER, *Circuit Judges*

After consideration of the contentions raised by appellants, to-wit, that (1) since the indictment contains no allegations, either explicitly or by equivalent factual assertion, that officers, employees, or agents of the corporate defendants acted within

the scope of their authority and in the course of their employment, it cannot be concluded that the grand jury considered these essential elements in returning an indictment and (2) since the government failed to prove that an officer, an employee or agent of LaBar Transportation Corporation acted with an intent to benefit it, the jury could not properly find LaBar Transportation guilty beyond a reasonable doubt, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

s/ Seitz
Chief Judge

ATTEST:

s/ Sally Mrvos
Sally Mrvos, Clerk

DATED: JUN 10, 1982

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA FILED JANUARY 21, 1981

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

vs

JAMES C. LaBAR, et al

CRIMINAL NOS. 80-00130-04
80-00130-05
80-00130-06

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On November 20, 1980, a grand jury for the Middle District of Pennsylvania returned a 25-count indictment charging three individuals and three corporations with conspiracy, mail fraud, and the filing of false statements in connection with an alleged scheme to defraud the United States Postal Service by claiming contract adjustments based on fraudulently inflated fuel costs. On December 22, 1980, the three corporate Defendants filed a motion to dismiss the indictment accompanied by a brief. The Government filed a brief in response to the motion on January 12, 1981. The corporate Defendants filed a reply brief on January 19, 1981.

The corporate Defendants argue that the indictment fails to allege all necessary elements of the crimes charged because the indictment, while it alleges "knowing" actions by the corporate Defendants, does not allege that officers, employees or agents of the corporate Defendants were acting within the scope of their

authority and in the course of their employment. A second ground urged in support of the motion is that the indictment fails to apprise the corporate Defendants of the nature of the charges they must meet at trial because it states no facts from which it may be determined for which corporations the individuals named in the indictment acted. Neither of the corporate Defendants' contentions warrants the dismissal of the indictment.

Neither party has been able to locate a case on point and the Court has been unable to do so. United States vs. Van Allen, 28 F.R.D. 329, 345 (S.D. N.Y. 1961) and United States vs. Detroit Sheet Metal & Roofing Contractors Association, Inc., 116 F. Supp. 81, 91 (E.D. Mi. 1953), cited by the Government, involved claims that the indictment must allege that the acts were specifically authorized by a corporate agent. The corporate Defendants do not claim that the specific acts must be authorized. The Defendants' argument is more subtle.

It is, of course, a fiction to speak of a corporation "knowing" something. Criminal liability can be imposed on a corporation for the "knowing" or "willful" violation of a statute only if the Government proves that the unlawful act was done by a corporate officer, employee or agent acting within the scope of his authority and in the course of his employment. United States vs. American Radiator & Standard Sanitary Corp., 433 F.2d 172, 204 (3d Cir. 1970), *cert denied*, 401 U.S. 948 (1971). The Defendants argue that the indictment must allege that corporate directors, employees or agents so acted and that it is not sufficient for the indictment to allege that a corporation did something knowingly. In Standard Oil Company of Texas vs. United States, 307 F.2d 120 (5th Cir. 1962), an indictment that charged only the commission of the prohibited act by the corporation was dismissed because the offense it purported to allege required that the Defendant act with knowledge. The indictment was dismissed not because the word

"knowingly" was absent from the indictment, but because "neither by express terminology nor by the facts otherwise appearing in the indictment is the critical element of a knowing violation set forth." Standard Oil Company of Texas vs. United States, 307 F.2d at 130. The corporate Defendants read too much into that case when they argue that an allegation of a knowing violation is insufficent to charge a corporation. All *Standard Oil* holds on this point is that such an allegation is not required if facts showing a knowing violation was alleged. The indictment in that case was dismissed because the indictment failed to allege either a knowing violation of facts showing a knowing violation.

The indictment in this case charges each of the corporate Defendants with knowing and willful violations of the law. No further allegations with respect to that element of the offenses need be set forth in the indictment. In order to prove the allegations of knowledge by the corporate Defendants, the Government must, of course, show more than performance of an act by a corporate employee. *See* Standard Oil Company of Texas vs. United States, 307 F.2d at 125, 128, 129. Because the indictment sets forth knowing violations of the statutes involved as well as the other elements of the offenses, the corporate Defendants' first attack on the indictment fails.

The Court's order in United States vs. Edwards, Criminal No. 78-67-2 (M.D. Pa. October 30, 1979), is not to the contrary. That case held that when an aider and abettor is incapable of committing a crime as principal, the indictment must set forth the elements required of aiding and abetting. In this case, the indictment sets forth each essential element of the offenses charged including the allegations that the acts of the corporation were committed knowingly and willfully.

Order of the United States District Court

The corporate Defendants' second attack on the indictment is that it is unconstitutionally vague because it does not set forth which individuals were acting on behalf of which corporate Defendant. The indictment states what each corporation is alleged to have done. The additional information sought by the corporate Defendants, such as who is alleged to have acted for each corporate Defendant, is not necessary for the indictment fairly to apprise the corporate Defendants of what they are alleged to have done; rather, such information is useful only to learn how the corporate Defendants are alleged to have performed the acts described in the indictment. The indictment is not subject to dismissal on vagueness grounds.

NOW, THERFORE, IT IS ORDERED THAT:

The motion of the corporate Defendants to dismiss the indictment is denied.

s/ Muir
MUIR, United States District Judge

INDICTMENT IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(Filed November 20, 1980)

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Criminal No. CR 80-00130

UNITED STATES OF AMERICA,

Plaintiff

vs.

JAMES C. LaBar, DONALD J. ROMANOWSKI, ROBERT F. CONNER, LaBAR ENTERPRISES, INC., LaBAR TRANSPORTATION CORP., and PETROLEUM SUPPLIERS, INC.,

Defendants

THE GRAND JURY CHARGES:

Introduction

1. At all times material and pertinent to this Indictment, LaBar Enterprises, Inc., was a Pennsylvania corporation having been incorporated on January 2, 1975, headquartered at Berwick, Pennsylvania, within the Middle District of Pennsylvania, and having as a purpose the administration and management of the following subsidiary corporations, among others:

LaBar Truck Rental, Inc.
LaBar Truck Sales, Inc.
LaBar Transportation Corporation
Lawton Enterprises, Inc.

2. At all times material and pertinent to this Indictment, LaBar Transportation Corporation was a Pennsylvania corporation, headquartered at Berwick, Pennsylvania, within the Middle District of Pennsylvania, having been incorporated on March 12, 1974, and having as a purpose the transportation of mail under contract to the U.S. Postal Service, pursuant to Title 39, United States Code, Section 5005.

3. At all times material and pertinent to this Indictment, LaBar Transportation Corporation was a wholly-owned subsidiary of LaBar Enterprises, Inc.

4. At all times material and pertinent to this Indictment, Petroleum Suppliers, Inc., was a Pennsylvania corporation, having been incorporated on April 18, 1977, and having as a purpose the billing of invoices to LaBar Transportation Corporation.

5. At all times material and pertinent to this Indictment, the Defendant, James C. LaBar, was President and sole owner of LaBar Enterprises, Inc., as well as the President of LaBar Transportation Corporation and largest single shareholder of Interstate Traveller Services, Inc.

6. At all times material and pertinent to this Indictment, the Defendant, Donald J. Romanowski, was Vice-President and Treasurer of LaBar Transportation Corporation and Vice-President and Treasurer of LaBar Enterprises, Inc.

7. From on or about April 18, 1977, up to and including the date of the filing of this Indictment, the Defendant, Robert F. Conner, was the President of Petroleum Suppliers, Inc.

8. At all times material and pertinent to this Indictment, the Defendant, Robert F. Conner, was President and minority

shareholder of Interstate Traveller Services, Inc., headquartered at Bloomsburg, PA, within the Middle District of Pennsylvania.

9. At all times material and pertinent to this Indictment, the United States Postal Service was an agency of the United States and was responsible, pursuant to Title 39, United States Code, Section 5005, for the making of contracts relating to the transportation of mail and to adjusting the compensation allowed under those contracts as the result of increased costs stemming from changed conditions occurring during the term of the contract.

10. Contracts with the U.S. Postal Service are awarded under a competitive bid procedure. Title 39, United States Code, Section 5005(b)(1) authorizes the Postal Service to adjust the compensation allowed contractors under those contracts for increased costs resulting from changed conditions occurring during the term of the contract. In its Regional Instructions, Filing Number 523, Part II(B) and Part VIII(G)(6)(a), dated September 27, 1977, as well as in the Postal Contracting Manual, Section 19-316.21, the U.S. Postal Service has interpreted "changed conditions" to mean changed economic conditions over which the contractor has little or no control.

11. At all times material and pertinent to this Indictment, it was the policy of the U.S. Postal Service to require contractors requesting fuel cost adjustments to certify the authenticity of claimed increases. Further, the U.S. Postal Service would require the contractor to submit documentation in the form of invoices or bills from their fuel suppliers to support those claims of increased costs.

12. During the period July 1, 1977, through December 31, 1978, LaBar Transportation Corporation, which is headquartered in Berwick, Pennsylvania, in the Middle District of Pennsylvania,

held as many as twenty-seven (27) contracts with the U.S. Postal Service to transport mail by truck between designated postal facilities, specifically:

U.S POSTAL SERVICE TRANSPORTATION MANAGEMENT OFFICE	ROUTE NUMBER	TERMINAL POINTS
Boston, MA	HCR 01990	Lynn/Springfield
Boston, MA	HCR 02390	Brockton/Springfield
Columbus, OH	HCR 44490[3]	Youngstown/Pittsbu
Greensboro, NC	HCR 27097	Greensboro GMF -
Greensboro, NC	HCR 27190	Greensboro/Columbi
Greensboro, NC	HCR 27191	Greensboro/Charlest
Greensboro, NC	HCR 27192	Greensboro/Florence
Jacksonville, FL	HCR 32210[3]	Jacksonville/Detroit
Jacksonville, FL	HCR 32211[3]	Jacksonville/Springfi
Jacksonville, FL	HCR 32212[3]	Jacksonville/Pittsbur
Jacksonville, FL	HCR 32296	Jacksonville/Miami

2. Terminated effective October 5, 1978.

3. Terminated effective June 30, 1978.

Indictment

sonville, FL	HCR 32297	Jacksonville/Orlando
phis, TN	HCR 38093	Memphis/Dresden, TN
York, NY	HCR 10210 (formerly 10212)	New York/Pittsburgh
York, NY	HCR 10214[4]	New York/Detroit
delphia, PA	HCR 17015	Harrisburg/Binghamton, NY
delphia, PA	HCR 17018	Harrisburg/New York
delphia, PA	HCR 17091	Harrisburg/Philadelphia
delphia, PA	HCR 17290	Chambersburg/Philadelphia
delphia, PA	HCR 17318	Hanover/New York B & FMC
delphia, PA	HCR 17890[5]	Sunbury/Philadelphia
delphia, PA	HCR 18418	Scranton/Harrisburg
delphia, PA	HCR 17707[6]	Williamsport/Chicago

4. Activated effective September 17, 1977.

5. Terminated effective March 12, 1978.

6. Under contract to P.L. Lawton, Inc., a subsidiary of LaBar Enterprises, Inc.

Springfield, MA	HCR 01094	Springfield/Montreal
Springfield, MA	HCR 01095	Springfield/Plattsburgh,
Springfield, MA	HCR 06290	Springfield/Willimantic,

13. Commencing on or about July 1, 1977, and continuing through December 31, 1978, Defendants, through LaBar Transportation Corporation, directly or indirectly caused to be submitted to the aforementioned Transportation Management Offices of the United States Postal Service various requests for fuel cost adjustments of the aforementioned contracts, in each instance certifying to the said United States Postal Service the authenticity of the claimed fuel cost increase.

14. As documentation of the claimed fuel increases, LaBar Transportation Corporation submitted various invoices or bills for fuel allegedly supplied to them by Petroleum Suppliers, Inc., and purporting to be the actual costs incurred by LaBar Transportation Corporation for diesel.

15. The aforesaid certifications accompanying the invoices were signed by either the defendant Donald J. Romanowski, or Rodger Crockford, Vice-President and General Manager of LaBar Transportation Corporation, and were frequently transmitted under cover letters bearing the signature of Daniel T. McHenry, Administrator for LaBar Transportation Corporation.

16. At all times material and pertinent to this Indictment, Interstate Traveller Services, Inc. was a Pennsylvania corporation, having been incorporated on November 29, 1965 under the name Tri-County Oil Corp. and having changed its name to Interstate Traveller Services, Inc. on July 24, 1973.

Indictment

THE GRAND JURY CHARGES:

COUNT I

The allegations set forth in paragraphs 1 through 16 within the section of this Indictment entitled Introduction are incorporated herein by reference as though fully set forth within this count.

That beginning sometime prior to April 18, 1977, the exact date being unknown to the Grand Jury, and continuing through December 31, 1978, in the Middle District of Pennsylvania and elsewhere, the Defendants,

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNER
PETROLEUM SUPPLIERS INC.
LaBAR ENTERPRISES INC.
LaBAR TRANSPORTATION CORP.

did conspire, combine, agree and confederate together among themselves and others known and unknown to the Grand Jury, to commit the following offenses against the United States, to wit: 1) to knowingly and wilfully falsify, conceal and cover up by a trick, scheme and or device a material fact and to make and cause to be made false, fictitious and fraudulent statements and representations as to material facts in a matter within the jurisdiction of the United States Postal Service, an agency of the United States, in violation of Section 1001 of Title 18 United States Code; and 2) to knowingly and wilfully use and cause the mails of the United States to be used for the purpose of executing a scheme and artifice to defraud, and attempting to do so, and for

the purpose of obtaining money and property by means of false and fraudulent pretenses, representation and promises, in violation of Section 1341 of Title 18 United States Code.

The scheme of the Defendants was to defraud the United States Postal Service of money by circumventing the regulations governing the administration of contract cost adjustments through the systematic, fraudulent and arbitrary inflation of the cost of diesel fuel used by LaBar Transportation Corporation to transport mail for the U.S. Postal Service.

As was part of the conspiracy and in an effort to effectuate the conspiracy and to accomplish its ends:

1. The Defendants and their agents undertook to and did form Petroleum Suppliers, Inc., whose sole purpose was to receive invoices from fuel dealers who had previously sold fuel directly to LaBar Transportation Corporation, and then to reinvoice or rebill the same fuel to LaBar Transportation Corporation at prices arbitrarily and fraudulently inflated by the Defendants.

2. Defendants and their agents undertook to and did prepare and disseminate, and cause to be prepared and disseminated, by use of the mails, materially false and misleading information to the U.S. Postal Service, which information contained false and fraudulent representations and omissions of material facts which had been falsified, concealed and covered up by a trick, scheme and device alleging that during the period from July 1, 1977, through December 31, 1978, LaBar Transportation Corporation was charged higher prices per gallon for diesel fuel to operate its Postal Service contracts than it actually was being charged.

3. Defendants and their agents undertook to and did prepare and disseminate and caused to be prepared and dissemminated,

by use of the mails, materially false and misleading information to the U.S. Postal Service, which information contained false and fraudulent representations that LaBar Transportation Corporation exercised no control over the aforesaid price increases and was not in any way connected with or in control of Petroleum Suppliers, Inc.

4. Defendants and their agents undertook to and did knowingly and wilfully receive and convert to one or more of themselves and to one or more entities controlled by Defendants, U.S. Treasury checks in an aggregate amount in excess of One Hundred Thousand Dollars ($100,000.00) as reimbursement from the United States Government for the arbitrarily and fraudulently inflated fuel invoices submitted by the Defendants to the U.S. Postal Service.

5. The Defendants, and their agents undertook to and did falsify, conceal and cover up by a trick, scheme or device and did fail to disclose material information to the U.S. Postal Service concerning the interrelationship between Petroleum Suppliers, Inc., and LaBar Transportation Corporation, as well as the amount of control over Petroleum Suppliers, Inc., exercised by the Defendants, despite Defendants knowing that these omissions resulted in material misrepresentations as to the actual fuel costs incurred by the Defendant, LaBar Transportation Corporation, and the actual amount of reimbursement the said LaBar Transportation Corporation was entitled to from the U.S. Postal Service.

OVERT ACTS

In an effort to effectuate this conspiracy and to accomplish its ends, the Defendants performed the following overt acts, among others:

Indictment

1. On or about April 18, 1977, the Defendants and their agents did directly and indirectly cause to be incorporated Petroleum Suppliers, Inc. for the purpose of receiving invoices or bills from fuel dealers who had previously sold fuel to LaBar Transportation Corporation and then reinvoicing or rebilling that same fuel to LaBar Transportation Corporation at prices arbitrarily and fraudulently inflated by the Defendants.

2. At all times material and pertinent to this Indictment, Petroleum Suppliers, Inc. had no paid employees. The only persons who performed documented services for Petroleum Suppliers, Inc. were on the payroll of LaBar Enterprises and handled bookkeeping for LaBar Transportation Corporation.

3. At all times material and pertinent to this Indictment, the books and records of Petroleum Suppliers, Inc. were maintained at the headquarters of LaBar Enterprises, Inc. in Berwick, Pennsylvania and in fact were physically located in the same office complex used by LaBar Transportation Corporation.

4. At all times material and pertinent to this Indictment, requests for fraudulent fuel costs adjustments were signed by one or more of the Defendants or their agents and mailed from LaBar Transportation Corporation, Berwick, Pennsylvania to the aforementioned Transportation Management Offices of the United States Postal Services.

5. At all times material and pertinent to this Indictment, United States Treasury checks containing in part fraudulently-obtained overpayments for fuel were mailed by the Postal Data Center, St. Louis, Missouri, to LaBar Transportation Corporation in Berwick, Pennsylvania.

6. At all times material and pertinent to this Indictment, including but not limited to August 29, 1977, November 11, 1977, February 21, 1978, June 26, 1978 and July 19, 1978, letters designed to mislead the United States Postal Service about the true nature of the relationship between Petroleum Suppliers, Inc. and LaBar Transportation Corporation were mailed or caused to be mailed by and at the direction of the Defendants from Berwick, Pennsylvania to some of the aforementioned Transportation Management Offices of the United States Postal Service.

7. During July of 1977, the Defendants did directly and indirectly cause 24,001 gallons of diesel fuel originally purchased and held by Interstate Travellers Services, Inc. to be delivered to LaBar Transportation Corporation. The diesel fuel was then invoiced to Petroleum Suppliers, Inc. by Interstate Travellers Services,Inc. at 41.75 cents per gallon during July of 1977, State and Federal taxes of 13 cents per gallon not included. On the same dates, Defendants did directly and indirectly cause Petroleum Suppliers, Inc. to reinvoice the aforesaid 24,001 gallons of diesel fuel to LaBar Transportation Corporation at an arbitrarily and fraudulently-inflated cost of 57.75 cents per gallon.

8. On or about August 16, 1977, the Defendants did directly and indirectly cause a checking account to be opened at the First National Bank in Mocanaqua, Pennsylvania, a checking account for Petroleum Suppliers, Inc. The said account was opened by using a $40,000.00 check drawn on the account of LaBar Transportation Corporation.

9. During December of 1977, the Defendants did directly and indirectly cause 20,376 gallons of diesel fuel originally purchased and held by LaBar Truck Rental, Inc. to be delivered to LaBar Transportation Corporation. The diesel fuel was then

invoiced to Petroleum Suppliers, Inc. by LaBar Truck Rental, Inc. at 54.75 cents per gallon during December of 1977. On the same dates, Defendants did directly and indirectly cause Petroleum Suppliers, Inc. to reinvoice the aforesaid 20,376 gallons of diesel fuel to LaBar Transportation Corporation at an arbitrarily and fraudulently-inflated cost of 66.9 cents per gallon.

10. At all times material and pertinent to this Indictment, the Defendant, DONALD J. ROMANOWSKI, did directly and indirectly cause an employee of LaBar Enterprises to create invoices addressed to LaBar Transportation Corporation on the letterhead of Petroleum Suppliers. Each invoice was to correspond to an invoice received by Petroleum Suppliers or LaBar Transportation Corporation from one of several fuel distributors and was to be the same with respect to quantity of fuel delivered and date and place of delivery, but not with respect to price. The new cost was inflated based on prices per gallon furnished the bookkeeper directly and indirectly by the Defendant, DONALD J. ROMANOWSKI, and his agents.

11. At all times material and pertinent to this Indictment, the Defendants, James C. LaBar and Robert F. Conner, maintained and employed the corporate entity of Interstate Traveller Services to conceal and convert some of the proceeds of the aforementioned scheme.

12. On or about November 15 1978, some of the proceeds from the aforesaid scheme acquired through LaBar Transportation Corporation and Petroleum Suppliers, Inc., were divided as follows: Eighty Thousand Dollars ($80,000.00) was paid to Interstate Travellers Services, Inc., and, on the same date, Forty Thousand Dollars ($40,000.00) was paid to LaBar Enterprises by Interstate Traveller Services, Inc. as management fees.

As further overt acts of this conspiracy, the Grand Jury hereby incorporates by reference each of the acts recited in each of the succeeding Counts of this Indictment. Each act contained therein is hereby designated as a separate overt act committed in furtherance of the conspiracy and to effect the objects thereof.

All of the foregoing being in violation of Title 18, United States Code, Section 371.

THE GRAND JURY FURTHER CHARGES:

COUNTS II THROUGH XII

1) The allegations set forth in paragraphs 1 through 16 within the section of this Indictment entitled Introduction, are incorporated within each of the following eleven counts by reference, as though fully set forth therein.

2) During the period from on or about April 18, 1977, to on or about December 31, 1978 in the Middle District of Pennsylvania,

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNOR
LaBAR ENTERPRISES, INC.
LaBAR TRANSPORTATION CORPORATION
PETROLEUM SUPPLIERS, INC.

devised and intended to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises to the U.S. Postal Service, well knowing at the time that the pretenses, representations and

promises would be and were false when made, the scheme and artifice, so devised and intended to be devised, being in substance as follows:

3) It was a part of the aforesaid scheme and artifice to defraud that the Defendants herein, on or about April 18, 1977, would and did form and caused to be formed a corporation called Petroleum Suppliers, Inc., whose sole purpose was to be the invoicing of fuel bills to the Defendant LaBar Transportation Corporation at fraudulently and arbitrarily-inflated prices.

4) It was a further part of the aforesaid scheme and artifice to defraud that the day-to-day operations of Petroleum Suppliers Inc. would be controlled and directed by the defendants, JAMES C. LaBAR and DONALD J. ROMANOWSKI.

5) It was a further part of the aforesaid scheme and artifice to defraud that JAMES C. LaBAR and DONALD J. ROMANOWSKI, Defendants herein, did send and cause to be sent to officials of the U.S. Postal Service, copies of fuel invoices from Petroleum Suppliers, Inc., to LaBar Transportation Corporation, which invoices contained prices that had been fraudulently and arbitrarily inflated by Defendants JAMES C. LaBAR and DONALD J. ROMANOWSKI and their agents for the purpose of misleading officials of the U.S. Postal Service into believing that LaBar Transportation Corporation had suffered fuel cost increases over which it, the said LaBar Transportation Corporation, had no control.

6) It was a further part of the aforesaid scheme and artifice to defraud that the Defendant ROBERT F. CONNER, who is not now, nor was he during all times material and pertinent to this Indictment, an employee of LaBar Enterprises, Inc. or LaBar Transportation Corporation, would and did allow his name and

address to be used on correspondence and other documents emanating from Petroleum Suppliers, Inc., in order to foster the impression that he was controlling and directing the day-to-day operations of Petroleum Suppliers, Inc.

7) It was a further part of the aforesaid scheme and artifice to defraud that JAMES C. LaBAR, DONALD J. ROMANOWSKI and ROBERT F. CONNER, Defendants herein, did send and cause to be sent correspondence to the United States Postal Service intended to mislead and conceal from Postal Service officials the true nature of the relationships among them and the Defendant, Petroleum Suppliers, Inc.

8) It was a further part of the aforesaid scheme and artifice to defraud that JAMES C. LaBAR and ROBERT F. CONNER, Defendants herein would and did divide some of the proceeds of the scheme by on November 15, 1978, disbursing Eighty Thousand Dollars ($80,000.00) designated by them as "management fees" from Petroleum Suppliers, Inc. to Interstate Traveller Services, Inc. and then on the same date disbursing Forty Thousand Dollars ($40,000.00), designated by them as "management fees" from Interstate Traveller Services, Inc. to LeBar Enterprises, Inc.

9) On or about each date set forth below with respect to each of the following eleven counts of this Indictment in the Middle District of Pennsylvania, and within the jurisdiction of this Court, Defendants,

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNER
LaBAR ENTERPRISES, INC.

having devised a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, to wit, the scheme which commenced on or about April 18, 1977, and continued until on or about December 31, 1978 and which is set forth in paragraphs one through five of that portion of Count I which indicates the various parts of the conspiracy engaged in by the Defendants, which paragraphs are contained on pages eight through nine of this Indictment, are incorporated within each of the following eleven Counts by reference as though fully set forth therein, did knowingly and wilfully and for the purpose of executing said scheme and artifice, and attempting to do so, caused to be placed in a Post Office or an authorized depository of mail matter, at Berwick, Pennsylvania the item designated in each particular Count, which item was addressed to the addressees named in each particular Count and was to be sent and delivered by the United States Postal Service, and the Defendants in doing so caused such item in each case to be delivered by mail according to the directions thereon as follows:

COUNT	DATE OF MAILING	ITEM(S)	ADDRESSEE
II	8/9/77	A letter containing requests for fuel adjustments for HCR's 01094, 01095 and 06290 and certifications to support the request.	Mr. William E. Moriarty USPS, TMO, Manager Springfield BMC Springfield, Massachusetts 01151
III	8/9/77	A letter containing requests for fuel adjustments for HCR's 17015, 17018, 17091 and 18418 and certifications to support the request.	Mr. A.S. Bergrine U.S. Postal Service, TMO Manager, Philadelphia BMC Philadelphia, Pennsylvania 19101
IV	8/29/77	A letter signed by or bearing the authorized signature of Defendant James C. LaBar.	Mr. J.F. Bergin Manager, Transportation Management Office U.S. Postal Service Boston, Massachusetts 02109
V	10/3/77	A letter containing fuel certifications for HCR's 17015, 17018, 17091 and 18418.	Mr. A.S. Bergrine TMO Manager Post Office Box 11640 Philadelphia, Pennsylvania 19116

VI	10/25/77	A letter containing requests for fuel adjustments for HCR's 27190, 27191, 27192 and 27097 and certifications to support the requests.	Mr. Charles J. James United States Postal Service Post Office Box 27499 Greensboro, North Carolina 27499
VII	11/1/77	A letter containing requests for fuel adjustments for HCR's 32210, 32211, 32212 32296 and 32297 and certifications to support the request.	United States Postal Service, Transportation Management Office Jacksonville, Florida
VIII	11/11/77	A letter signed by or bearing the authorized signature of Defendant James C. LaBar.	Mr. J.F. Bergin Manager, Transportation Management Office U.S. Postal Service South Postal Annex Boston, Massachusetts 02109
IX	2/6/78	A letter containing requests for fuel adjustments for HCR 10214 and 10210 and certifications to support the request.	Mr. Walter Bell U.S. Postal Service Transportation Management Office, 1980 Broadway New York, New York 10023

X	2/21/78	A letter bearing the signature "Robert F. Conner".	William E. Moriarty Manager, Transportation Management Office Springfield Bulk Mail Center Springfield, Massachusetts 01151
XI	6/26/78	A letter representing that LaBar Transportation Corporation had committed itself to negotiate with Petroleum Suppliers, Inc. a reduction in the price of diesel fuel.	Mr. Alex DaSilva Manager, U.S. Postal Service Transportation Management Office, 1980 Broadway New York, New York 10023
XII	7/19/78	A letter representing that negotiations between LaBar Transportation Corporation and Petroleum Suppliers, Inc. had been completed and a reduction in the cost of diesel fuel achieved.	Mr. Gary Thuro Manager, TMO U.S. Postal Service 1980 Broadway New York, New York 10023

All of the foregoing being in violation of Title 18 United States Code, Sections 2 and 1341.

Indictment

THE GRAND JURY FURTHER CHARGES:

COUNTS XIII THROUGH XXII

On or about each date listed below with respect to each of the immediately following ten counts of this Indictment, within the Middle District of Pennsylvania, and within the jurisdiction of this Court, Defendants

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNER
LaBAR ENTERPRISES, INC.
LaBAR TRANSPORTATION CORPORATION
PETROLEUM SUPPLIERS, INC.

having devised a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, to wit, the scheme which commenced on or about April 18, 1977, and continued until on or about December 31, 1978, and which is set forth in paragraphs one through five of that portion of Count I which indicates the various parts of the conspiracy engaged in by the Defendants, which paragraphs are contained on pages eight through nine of this Indictment, and as further set forth in paragraphs one through eight of Count II, all of which are incorporated within each of the following ten counts by reference, as though fully set forth therein, did knowingly and wilfully and for the purpose of executing said scheme and artifice, and attempting to do so, knowingly did take and receive, and cause to be taken and received, from the United States mails, at Berwick, Pennsylvania, the item(s) designated in each particular count set forth hereinafter, as follows:

COUNT	SENDER	DATE OF RECEIPT OF MAILING	ITEM(S)	ADDRESSEE
XIII	Postal Data Center U.S. Postal Service St. Louis, MO	10/10/77	A letter containing U.S. Treasury check No. 42,143,521	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XIV	Postal Data Center U.S. Postal Service St. Louis, MO	12/05/77	A letter containing U.S. Treasury check No. 42,391,456	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XV	Postal Data Center U.S. Postal Service St. Louis, MO	12/05/77	A letter containing U.S. Treasury check No. 42,391,457	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XVI	Postal Data Center U.S. Postal Service St. Louis, MO	12/05/77	A letter containing U.S. Treasury check No. 42,391,458	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XVII	Postal Data Center U.S. Postal Service St. Louis, MO	12/05/77	A letter containing U.S. Treasury check No. 42,390,903	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603

XVIII	Postal Data Center U.S. Postal Service St. Louis, MO	01/03/78	A letter containing U.S. Treasury check No. 42,469,711	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XIX	Postal Data Center U.S. Postal Service St. Louis, MO	01/30/78	A letter containing U.S. Treasury check No. 42,594,040	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XX	Postal Data Center U.S. Postal Service St. Louis, MO	01/30/78	A letter containing U.S. Treasury check No. 42,594,041	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XXI	Postal Data Center U.S. Postal Service St. Louis, MO	03/27/78	A letter containing U.S. Treasury check No. 42,850,801	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603
XXII	Postal Data Center U.S. Postal Service St. Louis, MO	06/19/78	A letter containing U.S. Treasury check No. 43,213,645	LaBar Transportation Corporation Box 331 — R.D. #1 Berwick, PA 18603

Indictment

THE GRAND JURY FURTHER CHARGES:

COUNT XXIII

On or about October 24, 1977, in the Middle District of Pennsylvania,

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNER
LaBAR ENTERPRISES, INC.
LaBAR TRANSPORTATION CORPORATION, and
PETROLEUM SUPPLIERS, INC.,

Defendants herein in a matter within the jurisdiction of the United States Postal Service, did wilfully and knowingly use and cause to be used a false writing and document containing a materially false, fictitious and fraudulent statement, knowing the same to contain such a statement, in that in a statement of costs, Defendant DONALD J. ROMANOWSKI certified to the said United States Postal Service in connection with the purchase of diesel fuel by the Defendants under a contract with the United States containing a fuel cost adjustment clause, the Defendant, DONALD J. ROMANOWSKI, stated and represented that diesel fuel had been purchased by LaBar Transportation Corporation at the rate of 58.2 cents per gallon for services rendered in the operation of HCR 27190, whereas in truth and fact, as the Defendants then knew, the sum of 50.95 cents per gallon had actually been paid by them for the acquisition of the said diesel fuel.

In violation of Title 18, United States Code, Sections 2 and 1001.

Indictment

THE GRAND JURY FURTHER CHARGES:

COUNT XXIV

On or about August 8, 1977, in the Middle District of Pennsylvania,

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNER
LaBAR ENTERPRISES, INC.
LaBAR TRANSPORTATION CORP., and
PETROLEUM SUPPLIERS, INC.,

Defendants herein, in a matter within the jurisdiction of the United States Postal Service, did wilfully and knowingly use and cause to be used a false writing and document containing a materially false, fictitious and fraudulent statement, knowing the same to contain such a statement, in that in a statement of costs, Defendant DONALD J. ROMANOWSKI certified to the said United States Postal Service in connection with the purchase of diesel fuel by the Defendants under a contract with the United States containing a fuel cost adjustment clause, the Defendant DONALD J. ROMANOWSKI stated and represented that diesel fuel had been purchased by LaBar Transportation Corporation at the rate of 58.2 cents per gallon for services rendered in the operation of HCR 01094, whereas in truth and fact, as the defendants then knew, the sum of 55.2 cents per gallon had actually been paid by them for the acquisition of the said diesel fuel.

In violation of Title 18 United States Code, Section 1001 and Section 2.

Indictment

THE GRAND JURY FURTHER CHARGES:

COUNT XXV

On or about August 29, 1977, in the Middle District of Pennsylvania,

JAMES C. LaBAR
DONALD J. ROMANOWSKI
ROBERT F. CONNER
LaBAR ENTERPRISES, INC.
LaBAR TRANSPORTATION
CORPORATION, and
PETROLEUM SUPPLIERS, INC.

the Defendants herein, having been asked by the United States Postal Service to state whether or not there was an interrelationship between Petroleum Suppliers, Inc., and LaBar Transportation Corporation, wilfully and knowingly concealed and covered up by a trick, scheme and device, material facts in a matter within the jurisdiction of the United States Postal Service, an agency of the United States, in that the Defendants, well knowing that Petroleum Suppliers, Inc., was controlled, managed and directed by LaBar Transportation Corporation and LaBar Enterprises, Inc., and well knowing that Petroleum Suppliers, Inc.'s sole function was to receive invoices from fuel suppliers for diesel fuel and to reinvoice that same diesel fuel to LaBar Transportation Corporation at fraudulently and arbitrarily inflated prices, the said prices to be passed along to the U.S. Postal Service, with the intent to convert the same to their, the said Defendants', own use, and concealed and covered up the aforesaid material facts by the trick, scheme and device of causing to be signed and causing to be submitted to the said U.S. Postal Service a letter designed

to mislead the said U.S. Postal Service regarding the true nature of the interrelationship between Petroleum Suppliers, Inc. and LaBar Transportation Corp., said letter having been addressed to Mr. William E. Moriarty, Manager, Transportation Management Office, Springfield Bulk Mail Center, Springfield, Massachusetts 01151.

In violation of Title 18 United States Code, Section 2 and Section 1001.

A TRUE BILL

Deputy Foreman

Date

s/ Carlon M. O'Malley, Jr.
CARLON M. O'MALLEY, JR.
United States Attorney

Certified from the record
Date 11/24/80
Donald R. Berry, Clerk

Per s/ S. Lehotsky
Deputy Clerk